

Potential Blind Spots in Clearance Process that Gave Snowden Top-Secret Access

By Andrew Katz

The name-calling hasn't stopped. Since June 9, when a 29-year-old government contractor outed himself as the source of secret documents that revealed far-reaching National Security Agency surveillance of telephone records and Internet data, Edward Snowden has been labeled everything from a hero to a traitor. A congressman called him a "defector" while others settled for "terrorist" and "the world's most famous spy." He may soon be branded a fugitive. Regardless of which moniker fits, Snowden's supporters and critics want to know how he quickly carved out a lucrative career, rising from NSA security guard to Geneva-based IT analyst with the CIA—where he acquired the top-secret security clearance to access the confidential information he leaked—and then to private intelligence contractor for Dell and Booz Allen Hamilton. At a closed-door meeting on June 12, Senators laid into NSA director Keith Alexander about why so many contractors can not only see, but also pick through, sensitive material. A widely cited government report published in April found that more than 483,000 contractors like Snowden held top-secret clearances as of last October. Nearly a million more Americans, including federal employees and other workers, had similar access—and that doesn't even include the nearly 300,000 who were approved for clearances in the year before. Just like everyone else with a security clearance, Snowden went through a multi-tiered background investigation to get it. Attorneys who specialize in representing candidates vying for top-secret security clearances say the process looks at their reliability, maturity level, judgment, trustworthiness and ability to protect national secrets. Applicants first complete and submit a 127-page questionnaire called Standard Form 86, which was last revised in December 2010 by the Office of Personnel Management, the government arm that handles or outsources most security clearance investigations for the Department of Defense. Others, like the FBI and CIA, may use their own guidelines. The questionnaire is blunt and thorough. A double-sided printout is nearly an inch thick. The forms ask at-length about relatives, foreign contacts or financial holdings, romantic relationships, debt and illegal vices. At the end, for good measure, are a series of questions pertaining to whether the applicant has ever "knowingly" tried to overthrow the government. After filling out the form, the floodgates open. Nicole Smith, an associate attorney at Tully Rinckey PLLC in Washington, D.C., and a former security clearance investigator, outlined the process as an essentially no-holds-barred job application. During an initial "personal subject interview," candidates meet with an investigator for two or three hours to go over the questionnaire, providing them with an opportunity to explain any "derogatory" information. This could include questions about why applicants, like Snowden, never finished college or the Army. Later, after half-hour sit-downs with coworkers, neighbors and friends, investigators perform a credit check, obtain a criminal report and parse other records. John Berry, a Reston, Va.-based attorney who handles clients attempting to earn these clearances, says Snowden likely sat for a polygraph, too, which aims to unearth lifestyle habits, allegiances to other nations and susceptibility to blackmail. When that's done, investigators type up an all-encompassing report and pass it to an adjudicator for a judgment call. If clearance is denied, the applicant receives a written explanation that can be appealed. Minor criminal conduct, such as alcohol

violations, or contacts in countries like Iran or Russia, aren't enough alone to disallow a clearance, Smith says, since adjudicators look at the "whole person concept" rather than odds and ends from the person's background. The final decision largely depends on how a candidate explains their past, notably any red flags. In Snowden's case, it's possible there was no cause to deny the clearance. "If the reasons for leaving the past employments weren't considered a security concern, then that's how he would go through," Smith says. "You're trying to get a personality characteristic to an extent, but unless there are any obvious derogatory information about that person, I don't see how knowing that Mr. Snowden would do what he did would really come about in the investigation." Smith says she became a security clearance investigator in 2003 for a company contracted by OPM to perform background checks. Until a few months ago, she juggled several cases at a time and conducted an average of five interviews a day. Despite major shifts in the intelligence community in recent years, she says the methods haven't changed much—even after Bradley Manning leaked a massive trove of military secrets to WikiLeaks. It's true that scrutiny of information technology workers like Snowden has increased over time as intelligence sharing moved deeper into the digital realm. But investigators may not be seeing the whole picture. In a photograph posted online after Snowden revealed himself, his laptop displays a sticker touting the Electronic Frontier Foundation, a longstanding advocate for online rights and staunch opponent of government surveillance. That would have been enough of a warning sign to make it into his file, Smith says, but investigators wouldn't have come across it because clearance interviews aren't performed at their homes: "You're not around that person's personal belongings to make any other additional observations about that person's characters." And unless the investigation process changed since she stopped taking cases in late March, a candidate's presence on social media—often a venue for employees to vent angst and political views—isn't considered. "We didn't ask about it to the subjects. Didn't come up in any of the source interviews. And we didn't do our own individual searches of a person's social media," she says. Berry agrees: His clients have increasingly voiced concerns about whether their online identities are being sorted through during clearance investigations, but he suggests there's too much data—and too many people vying for the coveted access—for that to happen. If that's the case, it appears that college recruiters look more rigorously at applicants' online lives than some federal departments. At press time, an OPM representative had not returned a request for comment. As the conversation shifts toward finding a solution, Smith doesn't think revamping the questionnaire would necessarily tighten security: "You're probably always going to have some who slip through the cracks." Greg Rinckey, a partner in her firm, suggests part of the answer instead lies within the agencies after the access has been granted, where management could look out for potentially disillusioned employees. "You've got to have somebody that's watching your people that hold the clearance," he says. "This is what failed." Just days after Snowden's unveiling, snippets from more than a decade of his online history were uncovered that could have been cause for investigators' concern: He was a prolific commenter on government and security issues, rallied against civil surveillance and contributed to Ron Paul's campaign at least twice last year. Ironically, the government might be able to prevent leaks like the one that revealed a widespread Internet surveillance program if they do a little more online detective work.